

STATEMENT OF

FRANK C. CARLUCCI

DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE

BEFORE THE

SUBCOMMITTEE ON LEGISLATION

OF THE

PERMANENT SELECT COMMITTEE ON INTELLIGENCE

HOUSE OF REPRESENTATIVES

JANUARY 30, 1980

ON

H.R. 5615

THE

"INTELLIGENCE IDENTITIES PROTECTION ACT"

MR. CHAIRMAN:

I WANT TO THANK YOU AND THE OTHER DISTINGUISHED MEMBERS OF THIS COMMITTEE FOR THE OPPORTUNITY TO DISCUSS LEGISLATION WHICH I CONSIDER TO BE URGENTLY NEEDED AND VITAL TO THE FUTURE SUCCESS OF OUR COUNTRY'S FOREIGN INTELLIGENCE COLLECTION EFFORTS. I HAVE WITH ME TODAY MY GENERAL COUNSEL, DANIEL B. SILVER, AND MY LEGISLATIVE COUNSEL, FREDERICK P. HITZ, BOTH OF WHOM HAVE BEEN INTIMATELY INVOLVED IN OUR EFFORTS TO OBTAIN STATUTORY PROTECTION FOR OFFICERS AND EMPLOYEES OF THE INTELLIGENCE COMMUNITY WHO SERVE UNDER COVER, AND FOR OUR FOREIGN AGENTS AND SOURCES WHOSE RELATIONSHIPS WITH THE INTELLIGENCE COMMUNITY ARE INTENTIONALLY CONCEALED.

I START THIS MORNING FROM THE PREMISE THAT OUR EFFORTS TO COLLECT INFORMATION ABOUT THE PLANS AND INTENTIONS OF OUR POTENTIAL ADVERSARIES CANNOT BE EFFECTIVE IN A CLIMATE THAT CONDONES REVELATION OF THE MEANS BY WHICH THOSE EFFORTS ARE CONDUCTED. INDEED, THE IMPUNITY WITH WHICH MISGUIDED

INDIVIDUALS CAN DISCLOSE OUR UNDERCOVER OFFICERS AND EMPLOYEES AND OUR FOREIGN AGENTS AND SOURCES HAS HAD A HARMFUL EFFECT ON HUMAN INTELLIGENCE COLLECTION AND OTHER ASPECTS OF OUR INTELLIGENCE PROGRAM AS WELL. EQUALLY SIGNIFICANT IS THE INCREASED RISK AND DANGER SUCH DISCLOSURES POSE TO THE MEN AND WOMEN WHO ARE SERVING THE UNITED STATES IN DIFFICULT ASSIGNMENTS ABROAD. IT IS OUTRAGEOUS THAT DEDICATED PEOPLE ENGAGED OR ASSISTING IN U.S. FOREIGN INTELLIGENCE ACTIVITIES CAN BE ENDANGERED BY A FEW INDIVIDUALS WHOSE AVOWED PURPOSE IS TO DESTROY THE EFFECTIVENESS OF ACTIVITIES AND PROGRAMS DULY AUTHORIZED BY THE CONGRESS.

MR. CHAIRMAN, RECENT WORLD EVENTS HAVE DRAMATICALLY DEMONSTRATED THE IMPORTANCE OF MAINTAINING A STRONG AND EFFECTIVE INTELLIGENCE APPARATUS. THE INTELLIGENCE COMMUNITY MUST HAVE BOTH THE MATERIAL AND THE HUMAN RESOURCES NEEDED TO ENHANCE ITS ABILITY TO MONITOR THE MILITARY ACTIVITIES OF OUR ADVERSARIES AND TO PROVIDE INSIGHTS INTO THE POLITICAL,

ECONOMIC, AND SOCIAL FORCES WHICH WILL SHAPE WORLD AFFAIRS IN THE 1980'S. IT IS PARTICULARLY IMPORTANT THAT EVERY EFFORT BE MADE TO PROTECT OUR INTELLIGENCE OFFICERS AND SOURCES. IT IS IMPERATIVE THAT THE 96TH CONGRESS CLEARLY AND COMPELLINGLY DECLARE THAT THE UNAUTHORIZED DISCLOSURE OF THE IDENTITIES OF OUR INTELLIGENCE OFFICERS AND THOSE ALLIED IN OUR EFFORTS WILL NO LONGER BE TOLERATED. THE PRESIDENT HAS EXPRESSED HIS DETERMINATION TO "INCREASE OUR EFFORTS TO GUARD AGAINST DAMAGE TO OUR CRUCIAL INTELLIGENCE SOURCES AND OUR METHODS OF COLLECTION, WITHOUT IMPAIRING CIVIL AND CONSTITUTIONAL RIGHTS." LEGISLATION IN THIS AREA MUST BE CAREFULLY CRAFTED. IT MUST SAFEGUARD THE NATION'S INTELLIGENCE CAPABILITIES WITHOUT IMPAIRING THE RIGHTS OF AMERICANS OR INTERFERING WITH CONGRESSIONAL OVERSIGHT.

ATTORNEY GENERAL CIVILETTI HAS RECOGNIZED THE NEED FOR IDENTITIES LEGISLATION. SPEAKING EARLIER THIS MONTH ON INTELLIGENCE AND THE LAW AT THE FORDHAM UNIVERSITY LAW

SCHOOL, HE SAID - "...THIS IS AN IMPORTANT TIME TO BE AWARE THAT THE UNFINISHED AGENDA OF LAWMAKING IN INTELLIGENCE INCLUDES SOME IMPORTANT ITEMS FOR THE LEGITIMATE PROTECTION OF OUR INTELLIGENCE ACTIVITIES. EXISTING LAW PROVIDES INADEQUATE PROTECTION TO THE MEN AND WOMEN WHO SERVE OUR NATION AS INTELLIGENCE OFFICERS. THEY NEED -- AND DESERVE -- BETTER PROTECTION AGAINST THOSE WHO WOULD INTENTIONALLY DISCLOSE THEIR SECRET MISSION AND JEOPARDIZE THEIR PERSONAL SAFETY BY DISCLOSING THEIR IDENTITIES. PUBLIC COMMENT AND CRITICISM OF INTELLIGENCE ACTIVITIES AND SPECIFIC OPERATIONS IS PROPER. REVEALING THE IDENTITIES OF PARTICULAR INTELLIGENCE PERSONNEL AND PLACING THEM IN DANGER, ON THE OTHER HAND, SERVES NO LEGITIMATE PURPOSE. OUR PROPER CONCERN FOR INDIVIDUAL LIBERTIES MUST BE BALANCED WITH A CONCERN FOR THE SAFETY OF THOSE WHO SERVE THE NATION IN DIFFICULT TIMES AND UNDER DANGEROUS CONDITIONS."

THIS COMMITTEE AND OTHER MEMBERS OF CONGRESS HAVE FOR

SOME TIME RECOGNIZED THE "INADEQUATE PROTECTION" TO WHICH THE ATTORNEY GENERAL REFERRED. REPRESENTATIVE MICHEL OF ILLINOIS AND SENATOR BENTSEN OF TEXAS INTRODUCED BILLS TO PROTECT INTELLIGENCE IDENTITIES IN THE 94TH AND 95TH CONGRESSES RESPECTIVELY. NINE "IDENTITIES" BILLS HAVE BEEN INTRODUCED THUS FAR IN THE 96TH CONGRESS, INCLUDING BILLS BY SENATOR BENTSEN AND BY REPRESENTATIVE CHARLES E. BENNETT OF FLORIDA, BOTH OF WHOM WILL BE TESTIFYING AT THESE HEARINGS. THE INTRODUCTION OF H.R. 5615, THE "INTELLIGENCE IDENTITIES PROTECTION ACT" BY THE ENTIRE MEMBERSHIP OF THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE LAST OCTOBER WAS, OF COURSE, AN EXTREMELY SIGNIFICANT DEVELOPMENT, AND AN IMPRESSIVE DEMONSTRATION OF THIS COMMITTEE'S DETERMINATION TO MAINTAIN THE EFFECTIVENESS OF OUR NATION'S FOREIGN INTELLIGENCE ACTIVITIES. LAST WEEK, THE COMMITTEE'S BILL WAS INTRODUCED IN THE SENATE AS SECTION 4 OF S. 2216, A BILL COSPONSORED BY SENATORS MOYNIHAN, JACKSON, NUNN, CHAFEE, DANFORTH, WALLOP,

AND DOMENICI. I BELIEVE THESE EFFORTS REFLECT A GROWING FEELING THAT WE, AS A GOVERNMENT, MUST COME TO GRIPS WITH THIS PROBLEM AND DETERMINE WHERE THE PUBLIC INTEREST LIES. I DO NOT BELIEVE THERE IS ANY JUSTIFICATION OR EXCUSE FOR THE DELIBERATE, PUBLIC DISCLOSURE OF THE IDENTITIES OF PERSONNEL HAVING CONCEALED EMPLOYMENT OR OTHER RELATIONSHIPS WITH THE INTELLIGENCE AGENCIES OF THE UNITED STATES GOVERNMENT.

THE DISTINGUISHED CHAIRMAN OF THIS COMMITTEE ELOQUENTLY EXPRESSED THE ESSENCE OF THE PROBLEM IN A RECENT LETTER TO THE EDITOR OF THE NEW YORK TIMES. CHAIRMAN BOLAND WROTE AS FOLLOWS:

"THE OPERATING HEART OF ANY SERVICE IS THE USE OF UNDERCOVER AGENTS AND OFFICERS OVERSEAS TO COLLECT INTELLIGENCE INFORMATION. OBVIOUSLY, IF THE NAMES OF THESE PEOPLE ARE SPREAD UPON THE PUBLIC RECORD THEIR USEFULNESS IS ENDED AND THE EFFECTIVENESS OF THE

CLANDESTINE SERVICE IS DESTROYED . . . UNAUTHORIZED DISCLOSURE OF THE NAMES OF UNDERCOVER INTELLIGENCE AGENTS IS A MISGUIDED ACT THAT SERVES NO USEFUL INFORMING FUNCTION WHATSOEVER. IT DOES NOT ALERT US TO ABUSES; IT DOES NOT BRING CLARITY TO ISSUES OF NATIONAL POLICY; IT DOES NOT ENLIGHTEN PUBLIC DEBATE; AND IT DOES NOT CONTRIBUTE ONE IOTA TO THE GOAL OF AN EDUCATED AND INFORMED ELECTORATE. WHAT IT DOES DO IS PLACE LIVES IN DANGER AND CRIPPLE OUR EFFORTS TO COLLECT TIMELY AND ACCURATE INTELLIGENCE, THE SINA QUA NON FOR THE EFFECTIVE CONDUCT OF FOREIGN AFFAIRS. WHATEVER THE MOTIVES OF THOSE ENGAGED IN SUCH ACTIVITY THE ONLY RESULT IS THE COMPLETE DISRUPTION OF OUR LEGITIMATE INTELLIGENCE COLLECTION PROGRAMS, PROGRAMS THAT BEAR THE IMPRIMATUR OF THE CONGRESS, THE PRESIDENT AND THE AMERICAN PEOPLE. SUCH A RESULT BENEFITS NO ONE BUT OUR ADVERSARIES."

MR. CHAIRMAN, THOSE WHO SEEK TO DESTROY THE INTELLIGENCE

ACTIVITIES OF THE UNITED STATES HAVE PROPAGATED A NUMBER OF

FALLACIES. UNFORTUNATELY SOME OF THESE HAVE FOUND THEIR WAY INTO DISCUSSIONS OF H.R. 5615 IN THE PRESS AND ELSEWHERE.

ONE OF THESE FALLACIES IS THAT ACCURATE IDENTIFICATION OF CIA PERSONNEL UNDER COVER CAN BE MADE MERELY BY CONSULTING PUBLICLY AVAILABLE DOCUMENTS, LIKE THE STATE DEPARTMENT'S BIOGRAPHIC REGISTER, AND THEREFORE THE BILL WOULD IMPINGE ON DISCUSSION OF INFORMATION THAT IS IN THE PUBLIC DOMAIN. THIS IS UNTRUE. THERE IS NO OFFICIAL UNCLASSIFIED LISTING ANYWHERE THAT IDENTIFIES UNDERCOVER CIA OFFICERS. THE BIOGRAPHIC REGISTER AND SIMILAR DOCUMENTS CANNOT BE USED, WITHOUT ADDITIONAL SPECIALIZED KNOWLEDGE AND SUBSTANTIAL EFFORT, TO MAKE SUCH IDENTIFICATIONS ACCURATELY. IT IS ONLY BECAUSE OF THE DISCLOSURE OF SENSITIVE INFORMATION BASED ON PRIVILEGED ACCESS AND MADE BY FAITHLESS GOVERNMENT EMPLOYEES, SUCH AS PHILIP AGEE AND JOHN MARKS, WITH THE PURPOSE OF DAMAGING U.S. INTELLIGENCE EFFORTS THAT THE PUBLIC HAS BECOME AWARE OF INDICATORS IN THESE DOCUMENTS THAT CAN -- AND SOMETIMES DO -- DISTINGUISH CIA OFFICERS.

THIS, HOWEVER, IS NOT THE FULL EXTENT OF THE PROBLEM. A SUBSTANTIAL NUMBER OF THE IDENTIFICATIONS MADE BY SUCH AVOWED ENEMIES OF UNITED STATES INTELLIGENCE ACTIVITY AS THE PUBLISHERS OF COVERT ACTION INFORMATION BULLETIN HAVE BEEN ACCURATE. THIS INDICATES THAT THEY ARE BASED ON EXTENSIVE INVESTIGATION, USING MANY OF THE SAME TECHNIQUES AS ANY INTELLIGENCE SERVICE USES IN ITS COUNTERINTELLIGENCE EFFORTS -- IN EFFECT, SPYING ON THE UNITED STATES.

A SECOND FALLACY IS SO RIDICULOUS THAT I WOULD NOT MENTION IT EXCEPT THAT IT HAS CROPPED UP REPEATEDLY IN DISCUSSION OF THIS MATTER. THAT IS THAT SOMEONE MAY ENGAGE, IN GOOD FAITH, IN THE PUBLIC DISCLOSURE OF INTELLIGENCE IDENTITIES IN ORDER TO IMPROVE THE SECURITY PRACTICES OF OUR

INTELLIGENCE AGENCIES. THIS IS LIKE SAYING THAT A PERSON MIGHT SHOOT MEMBERS OF CONGRESS FOR THE SOLE PURPOSE OF STRENGTHENING CAPITOL SECURITY BY DEMONSTRATING SHORTCOMINGS. ANY PATRIOTIC CITIZEN WHO BELIEVES THAT HE HAS DETECTED WEAKNESSES IN THE COVER ARRANGEMENTS USED BY A UNITED STATES INTELLIGENCE ORGANIZATION CAN SERVE THE INTEREST OF IMPROVING SECURITY ONLY BY DISCREETLY BRINGING THAT INFORMATION TO THE ATTENTION OF THE ORGANIZATION ITSELF, THE PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD, OR THIS COMMITTEE OR THE SENATE SELECT COMMITTEE ON INTELLIGENCE.

A THIRD FALLACY IS THAT THOSE WHO SEEK THE DESTRUCTION OF THE NATION'S INTELLIGENCE ACTIVITIES CANNOT BE DISTINGUISHED FROM SINCERE CRITICS OF THE CIA OR OTHER INTELLIGENCE AGENCIES AND ACTIVITIES. THE BEST ANSWER TO THIS IS THE ONE GIVEN BY ATTORNEY GENERAL CIVILETTI: "PUBLIC COMMENT AND CRITICISM OF INTELLIGENCE ACTIVITIES AND SPECIFIC OPERATIONS IS PROPER. REVEALING THE IDENTITIES OF PARTICULAR INTELLIGENCE

PERSONNEL AND PLACING THEM IN DANGER, ON THE OTHER HAND, SERVES NO LEGITIMATE PURPOSE." IT IS NOTEWORTHY IN THIS REGARD THAT THE CHURCH AND PIKE COMMITTEE INVESTIGATIONS, THE ROCKEFELLER COMMISSION REPORT, AND RELATED PRESS DISCLOSURES, AS WELL AS THE SUBSEQUENT OVERSIGHT ACTIVITIES OF THIS COMMITTEE AND ITS SENATE COUNTERPART, ALL HAVE MANAGED TO ENCOMPASS EXTENSIVE PUBLIC AND CONGRESSIONAL SCRUTINY AND CRITICISM OF INTELLIGENCE ACTIVITIES WITHOUT RECOURSE TO WHOLESALE DISCLOSURE OF THE NAMES OF UNDERCOVER INTELLIGENCE PERSONNEL IN THE CATEGORIES COVERED BY H.R. 5615. I BELIEVE THAT THIS COMMITTEE AND THE CONGRESS WILL FIND THAT WE NEED TO EFFECTIVELY PUT AN END TO THE DELIBERATE DISCLOSURE OF THE IDENTITIES OF OUR COVERT INTELLIGENCE PERSONNEL FOR ANY REASON.

THAT THE UNAUTHORIZED DISCLOSURE OF THE IDENTITIES OF INDIVIDUALS ENGAGED OR ASSISTING IN THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES HAS DAMAGED OUR NATION'S

FOREIGN INTELLIGENCE GATERING CAPABILITIES IS BEYOND QUESTION. OBVIOUSLY, SECURITY CONSIDERATIONS PRECLUDE MY CONFIRMING OR DENYING SPECIFIC INSTANCES OF PURPORTED IDENTIFICATION OF U.S. INTELLIGENCE PERSONNEL. SUFFICE IT TO SAY THAT A SUBSTANTIAL NUMBER OF THESE DISCLOSURES HAVE BEEN ACCURATE. THE DESTRUCTIVE EFFECTS OF THESE DISCLOSURES HAVE BEEN VARIED AND WIDE-RANGING.

OUR RELATIONS WITH FOREIGN SOURCES OF INTELLIGENCE HAVE BEEN IMPAIRED. SOURCES HAVE EVINced INCREASED CONCERN FOR THEIR OWN SAFETY. SOME ACTIVE SOURCES, AND INDIVIDUALS CONTEMPLATING COOPERATION WITH THE UNITED STATES, HAVE TERMINATED OR REDUCED THEIR CONTACT WITH US. SOURCES HAVE QUESTIONED HOW THE UNITED STATES GOVERNMENT CAN EXPECT ITS FRIENDS TO PROVIDE INFORMATION IN VIEW OF CONTINUING DISCLOSURES OF INFORMATION THAT MAY JEOPARDIZE THEIR CAREERS, LIBERTY AND VERY LIVES.

NEARLY ALL MAJOR FOREIGN INTELLIGENCE SERVICES WITH WHICH WE HAVE LIAISON RELATIONSHIPS HAVE UNDERTAKEN REVIEWS OF THEIR RELATIONS WITH US. SOME IMMEDIATELY DISCERNIBLE RESULTS OF CONTINUING DISCLOSURES INCLUDE REDUCTION OF CONTACT AND REDUCED PASSAGE OF INFORMATION. IN TAKING THESE ACTIONS, SOME LIAISON SERVICES HAVE EXPLICITLY CITED DISCLOSURES OF INTELLIGENCE IDENTITIES.

WE ARE INCREASINGLY BEING ASKED TO EXPLAIN HOW WE CAN GUARANTEE THE SAFETY OF INDIVIDUALS WHO COOPERATE WITH US WHEN WE CANNOT PROTECT OUR OWN OFFICERS FROM EXPOSURE. YOU CAN IMAGINE THE CHILLING EFFECT IT MUST HAVE ON A SOURCE TO ONE DAY DISCOVER THAT THE INDIVIDUAL WITH WHOM HE HAS BEEN IN CONTACT HAS BEEN OPENLY IDENTIFIED AS A CIA OFFICER. THE IMPACT IN THIS REGARD IS TWOFOLD: FIRST, THERE IS A SUBSTANTIAL ADVERSE IMPACT ON THE AGENCY'S ABILITY TO COLLECT INTELLIGENCE; SECONDLY, SOME OF OUR FOREIGN SOURCES WHO MUST REMAIN IN PLACE IN SPITE OF THE DISCLOSURE MAY BE SUBJECT TO SEVERE SANCTIONS.

THE PROFESSIONAL EFFECTIVENESS OF OFFICERS SO COMPROMISED IS SUBSTANTIALLY AND SOMETIMES IRREPARABLY DAMAGED. THEY MUST REDUCE OR BREAK CONTACT WITH SENSITIVE COVERT SOURCES. CONTINUED CONTACT MUST BE COUPLED WITH INCREASED DEFENSIVE MEASURES THAT ARE INEVITABLY MORE COSTLY AND TIME-CONSUMING. SOME OFFICERS MUST BE REMOVED FROM THEIR ASSIGNMENTS AND RETURNED FROM OVERSEAS AT SUBSTANTIAL COST. YEARS OF IRREPLACEABLE AREA EXPERIENCE AND LINGUISTIC SKILL ARE LOST. REASSIGNMENT MOBILITY OF THE COMPROMISED OFFICER IS IMPAIRED. AS A RESULT, THE POOL OF EXPERIENCED CIA OFFICERS IS BEING REDUCED. SUCH LOSSES ARE DEEPLY FELT IN VIEW OF THE FACT THAT, IN COMPARISON WITH THE INTELLIGENCE SERVICES OF OUR ADVERSARIES, WE ARE NOT A LARGE ORGANIZATION. REPLACEMENT OF OFFICERS THUS COMPROMISED IS DIFFICULT AND, IN SOME CASES, IMPOSSIBLE. ONCE AN OFFICER'S IDENTITY IS DISCLOSED, MOREOVER, COUNTERINTELLIGENCE ANALYSIS BY ADVERSARY SERVICES ALLOWS THE OFFICER'S PREVIOUS ASSIGNMENTS TO BE SCRUTINIZED, PRODUCING AN EXPANDED PATTERN OF COMPROMISE THROUGH ASSOCIATION.

SUCH DISCLOSURES ALSO SENSITIZE HOSTILE SECURITY SERVICES AND FOREIGN POPULATIONS TO CIA PRESENCE, MAKING OUR JOB FAR MORE DIFFICULT. FINALLY, SUCH DISCLOSURES CAN PLACE INTELLIGENCE PERSONNEL AND THEIR FAMILIES IN PHYSICAL DANGER FROM TERRORIST OR VIOLENCE-PRONE ORGANIZATIONS.

MR. CHAIRMAN, I AM PREPARED TO DISCUSS IN EXECUTIVE SESSION INDIVIDUAL CASES WHICH EXEMPLIFY THE DAMAGE DONE TO OUR INTELLIGENCE-GATHERING CAPABILITIES. MOST SIGNIFICANT, HOWEVER, IS THE FACT THAT THE COLLECTION OF INTELLIGENCE IS SOMETHING OF AN ART. THE SUCCESS OF OUR OFFICERS OVERSEAS DEPENDS TO A VERY LARGE EXTENT ON INTANGIBLE PSYCHOLOGICAL AND HUMAN CHEMISTRY FACTORS, ON FEELINGS OF TRUST AND CONFIDENCE THAT HUMAN BEINGS ENGENDER IN EACH OTHER, AND ON ATMOSPHERE AND MILIEU. UNAUTHORIZED DISCLOSURE OF INFORMATION IDENTIFYING INDIVIDUALS ENGAGED OR ASSISTING IN FOREIGN INTELLIGENCE ACTIVITIES DESTROYS THAT CHEMISTRY. WHILE WE CAN DOCUMENT A NUMBER OF SPECIFIC CASES, THE COMMITTEE MUST

UNDERSTAND THAT THERE IS NO WAY TO DOCUMENT THE LOSS OF POTENTIAL SOURCES WHO FAIL TO CONTACT US BECAUSE OF LACK OF CONFIDENCE IN OUR ABILITY TO PROTECT THEIR IDENTITIES.

IN A TIME WHEN HUMAN SOURCES OF INTELLIGENCE ARE OF CRITICAL IMPORTANCE, THERE CAN BE NO DOUBT THAT UNAUTHORIZED DISCLOSURES OF THE IDENTITIES OF OUR OFFICERS, AGENTS, AND SOURCES CONSTITUTE A SERIOUS THREAT TO OUR NATIONAL SECURITY. CURRENT LAW HAS PROVEN TO BE INADEQUATE IN DETERRING THESE UNAUTHORIZED DISCLOSURES, AND THEY CONTINUE TO BE MADE WITH VIRTUAL IMPUNITY. THE NET RESULT IS A DAMAGED INTELLIGENCE CAPABILITY AND REDUCED NATIONAL SECURITY.

MR. CHAIRMAN, I BELIEVE THAT LEGISLATION IN THIS AREA, TO BE EFFECTIVE, SHOULD CONTAIN CERTAIN KEY DISTINCTIONS AND ELEMENTS. FIRST, IT SHOULD HOLD CURRENT AND FORMER EMPLOYEES AND OTHERS WITH AUTHORIZED ACCESS TO PROTECTED INFORMATION TO A HIGHER STANDARD THAN PERSONS WHO HAVE NOT HAD SUCH ACCESS. SUCH INDIVIDUALS, BECAUSE OF THEIR EMPLOYMENT

RELATIONSHIPS OR OTHER POSITIONS OF TRUST, CAN LEGITIMATELY BE HELD ACCOUNTABLE FOR THE DELIBERATE DISCLOSURE OF ANY IDENTITY THEY KNOW, OR HAVE REASON TO KNOW, IS PROTECTED BY THE UNITED STATES.

SECONDLY, THE LEGISLATION SHOULD REQUIRE PROOF THAT A DISCLOSURE IS MADE WITH CULPABLE KNOWLEDGE, OR WITH KNOWLEDGE OF SUFFICIENT FACTS TO MAKE THE AVERAGE PERSON AWARE OF THE NATURE AND GRAVITY OF HIS ACTIONS. THIS IS AN IMPORTANT ELEMENT BECAUSE IT MUST DESCRIBE A STATE OF MIND WHICH WILL SUPPORT THE ATTACHMENT OF CRIMINAL SANCTION, WHILE AT THE SAME TIME BE CAPABLE OF PROOF IN THOSE DISCLOSURE CASES WHICH HAVE BEEN DAMAGING. IF A PERSON DISCLOSES A PROTECTED INTELLIGENCE IDENTITY WITH KNOWLEDGE OR REASON TO KNOW THAT THE UNITED STATES TAKES AFFIRMATIVE STEPS TO CONCEAL THE INTELLIGENCE RELATIONSHIP INVOLVED, THAT PERSON HAS ACTED WITH CULPABLE KNOWLEDGE. THIS KNOWLEDGE CAN BE DEMONSTRATED WHEN THE PERSON MAKING A DISCLOSURE STATES AWARENESS THAT A COVER EMPLOYMENT OR OTHER CONCEALED RELATIONSHIP IS INVOLVED.

FINALLY, A STATUTE SHOULD REQUIRE PROOF THAT UNAUTHORIZED DISCLOSURES BY THOSE WHO HAVE NOT HAD AN EMPLOYMENT OR OTHER RELATIONSHIP OF TRUST WITH THE UNITED STATES WERE MADE WITH A SPECIFIC INTENT TO IMPAIR OR IMPEDE THE NATION'S FOREIGN INTELLIGENCE ACTIVITIES. THIS REQUIREMENT WOULD BE FOR THE PROTECTION OF THOSE WHO MIGHT CLAIM THEY HAVE MADE A PUBLIC DISCLOSURE FOR A LEGITIMATE PURPOSE, ALTHOUGH I BELIEVE CONGRESS SHOULD DETERMINE IF THERE ARE ANY SUCH PURPOSES AND MAKE PROVISION FOR THEM. FOR EXAMPLE, IF THE CONGRESS FINDS THAT CURRENT REQUIREMENTS AND PROCEDURES FOR REPORTING ALLEGATIONS OF ILLEGAL OR IMPROPER ACTIVITY BY INTELLIGENCE EMPLOYEES MAY NOT BE SUFFICIENT TO DISCOVER SUCH ACTIVITY, IT COULD PROVIDE IN STATUTE FOR DIRECT REPORTING TO THE CONGRESS, OR TO THE ATTORNEY GENERAL, OR EVEN TO THE PRESIDENT. IN THIS WAY IT COULD BE MADE CLEAR THAT THERE IS NO JUSTIFICATION FOR THE PUBLIC DISCLOSURE OF PROTECTED INTELLIGENCE IDENTITIES.

IN MY VIEW H.R. 5615 GOES A LONG WAY TOWARD MEETING THESE CRITERIA. IT IS A CAREFULLY CRAFTED AND NARROWLY DRAWN MEASURE WHICH COMES TO GRIPS WITH THE FULL EXTENT OF THE PROBLEM. THE COMMITTEE'S BILL WOULD GO FAR TOWARD SAFEGUARDING VITAL INTELLIGENCE CAPABILITIES WITHOUT IMPAIRING THE RIGHTS OF AMERICANS OR INTERFERING WITH CONGRESSIONAL OVERSIGHT. IN THE OPINION OF THE AGENCY'S LAWYERS, THE BILL WOULD MAKE POSSIBLE PROSECUTION OF THOSE WHO SEEK TO DESTROY THE INTELLIGENCE CAPABILITIES OF THE UNITED STATES, WHILE LEAVING UNTOUCHED LEGITIMATE CRITICISM OF THE INTELLIGENCE COMMUNITY OR ITS ACTIVITIES. THERE ARE, HOWEVER, SEVERAL IMPROVEMENTS TO THE BILL THAT I WOULD URGE YOU TO MAKE:

1. FIRST, THE DEPARTMENT OF JUSTICE, IN ITS COMMENTS ON THE BILL, HAS SUGGESTED THAT PERSONS WHO ARE NOT PRESENT OR FORMER INTELLIGENCE EMPLOYEES SHOULD BE COVERED WHENEVER THE DISCLOSURE IS "BASED ON CLASSIFIED INFORMATION." WE DO NOT THINK THAT THIS

FORMULATION WOULD ADEQUATELY COVER ALL CASES, SINCE IN MANY OF THE MOST EGREGIOUS CURRENT CASES A NEXUS TO CLASSIFIED INFORMATION WOULD BE DIFFICULT TO PROVE BEYOND A REASONABLE DOUBT. THUS, I CANNOT SUPPORT THIS FORMULATION AS A SUBSTITUTE FOR SECTION 501(B). ON THE OTHER HAND, I AM PERSUADED BY THE JUSTICE DEPARTMENT'S ARGUMENTS THAT THERE MAY BE SOME CASES IN WHICH THE SPECIFIC INTENT TO IMPAIR OR IMPEDE U.S. INTELLIGENCE ACTIVITIES WOULD BE DIFFICULT TO PROVE, BUT IN WHICH A NEXUS TO CLASSIFIED INFORMATION WOULD NOT. IN ORDER TO PROVIDE FULL COVERAGE, THEREFORE, I WOULD PROPOSE THAT SECTION 501(B) BE REVISED TO PROVIDE TWO ALTERNATIVE BASES FOR LIABILITY. ONE WOULD BE DISCLOSURE WITH THE SPECIFIC INTENT TO IMPAIR OR IMPEDE THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES; THE OTHER WOULD BE DISCLOSURE OF IDENTITIES "BASED ON CLASSIFIED INFORMATION."

2. A SECOND AREA REQUIRING IMPROVEMENT RELATES TO THE PROSECUTION OF ACCOMPLICES AND CONSPIRATORS. AS NOW DRAFTED H.R. 5615 WOULD BAR SUCH PROSECUTION IN ALL CASES UNLESS THE ALLEGED ACCOMPLICE OR CONSPIRATOR POSSESSED THE SPECIFIC INTENT TO IMPAIR OR IMPEDE THE NATION'S FOREIGN INTELLIGENCE ACTIVITIES. I UNDERSTAND AND AGREE WITH THE ADVISABILITY OF REQUIRING SUCH A SPECIFIC INTENT IN THE CASE OF AN ACCOMPLICE OR CONSPIRATOR TO VIOLATE SECTION 501(B) OF THE BILL. ON THE OTHER HAND, I SEE NO REASON TO IMMUNIZE PERSONS WHO ASSIST OR CONSPIRE WITH CURRENT OR FORMER EMPLOYEES OR OTHERS HAVING AUTHORIZED ACCESS TO CLASSIFIED INFORMATION IN THE COMMISSION OF AN OFFENSE UNDER SECTION 501(A). WITH RESPECT TO THIS LATTER GROUP OF ACCOMPLICES AND CONSPIRATORS, THERE SHOULD NOT BE A SPECIFIC INTENT REQUIREMENT.

3. H.R. 5615 DOES NOT COVER DISCLOSURE OF THE IDENTITIES OF FORMER OFFICERS OR EMPLOYEES OF AN

INTELLIGENCE AGENCY OR MEMBERS OF THE ARMED FORCES FORMERLY ASSIGNED TO DUTY WITH AN INTELLIGENCE AGENCY. TO BE EFFECTIVE THE LEGISLATION SHOULD EXTEND TO THESE CATEGORIES OF PERSONS. MANY OFFICERS AND EMPLOYEES RETIRE OR ARE SEPARATED UNDER COVER FOR A VARIETY OF REASONS. DISCLOSURE OF THEIR FORMER INTELLIGENCE AGENCY AFFILIATION MAY PLACE THEM OR THEIR FAMILIES IN PHYSICAL DANGER OR MAY SUBJECT THEM TO HARASSMENT OR THREAT OF BODILY INJURY. MOREOVER, THERE ARE VERY REAL COUNTERINTELLIGENCE REASONS FOR MAINTAINING COVER. IN MANY INSTANCES THE INDIVIDUAL'S CONTACTS AND SOURCES MAY STILL BE IN PLACE AND ACTIVE. SUCH A NETWORK MAY HAVE BEEN PASSED ON TO THE FORMER OFFICER'S SUCCESSOR. SHOULD THE FORMER INDIVIDUAL'S RELATIONSHIP BE REVEALED, THE ENTIRE NETWORK MAY BE COMPROMISED. ACCORDINGLY, IN THOSE CASES WHERE SUCH RELATIONSHIPS REMAIN OTHERWISE CONCEALED AND WHERE THE UNITED STATES

CONTINUES TO TAKE AFFIRMATIVE MEASURES TO KEEP THEM
CONCEALED, UNAUTHORIZED DISCLOSURES SHOULD WARRANT
ATTACHMENT OF CRIMINAL LIABILITY.

MR. CHAIRMAN, THERE IS A PRESSING NEED FOR EFFECTIVE
LEGISLATION TO DISCOURAGE UNAUTHORIZED DISCLOSURES OF
INTELLIGENCE IDENTITIES. THE CREDIBILITY OF OUR COUNTRY IN
ITS RELATIONSHIPS WITH FOREIGN LIAISON SERVICES AND AGENT
SOURCES, THE PERSONAL SAFETY AND WELL-BEING OF PATRIOTIC
AMERICANS SERVING THEIR COUNTRY, AND THE PROFESSIONAL
EFFECTIVENESS AND MORALE OF OUR COUNTRY'S INTELLIGENCE
OFFICERS ARE ALL AT STAKE.

AS MATTERS NOW STAND THE INTENTIONAL EXPOSURE OF COVERT
INTELLIGENCE PERSONNEL WITH IMPUNITY IMPLIES A GOVERNMENTAL
POSITION OF NEUTRALITY. IT SUGGESTS THAT U.S. INTELLIGENCE
OFFICERS ARE "FAIR GAME" FOR THOSE MEMBERS OF THEIR OWN
SOCIETY WHO TAKE ISSUE WITH THE EXISTENCE OF CIA OR FIND
OTHER PERVERSE MOTIVES FOR MAKING THESE UNAUTHORIZED DISCLOSURES.

SPECIFIC STATUTORY PROHIBITION OF SUCH ACTION IS CRITICAL TO THE MAINTENANCE OF AN EFFECTIVE FOREIGN INTELLIGENCE SERVICE. IT IS IMPERATIVE THAT A MESSAGE BE SENT THAT THE UNAUTHORIZED DISCLOSURE OF INTELLIGENCE IDENTITIES IS INTOLERABLE.

I SINCERELY APPRECIATE YOUR GENUINE CONCERN ABOUT OUR INTELLIGENCE CAPABILITIES AND WHOLEHEARTEDLY SUPPORT YOUR EFFORTS TO DEAL WITH THIS SERIOUS PROBLEM. I ENCOURAGE YOU TO PROCEED TO REPORT LEGISLATION THAT WILL PROVIDE AN EFFECTIVE REMEDY. I BELIEVE EFFECTIVE LEGISLATION TO PROTECT INTELLIGENCE CAN AND SHOULD BE A KEY PART OF THE FOUNDATION FOR THE REVITALIZATION OF OUR NATION'S FOREIGN INTELLIGENCE CAPABILITIES.

WE HAVE SUPPLIED THE COMMITTEE WITH SOME SUGGESTED DRAFTING CHANGES IN H.R. 5615. MR. SILVER AND MR. HITZ WILL BE HAPPY TO DISCUSS THESE MATTERS IN GREATER DETAIL OR TO ANSWER ANY QUESTIONS YOU MAY HAVE ON THEM.

ANNEX TO THE STATEMENT OF
DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE
FRANK C. CARLUCCI

PROPOSED MODIFICATIONS TO H.R. 5615

1. Add a new subsection (c) to Section 501, as follows:

(c) Whoever discloses to any individual not authorized to receive classified information any information that--

(1) identifies as an officer or employee of an intelligence agency, or as a member of the Armed Forces assigned to duty with an intelligence agency, any individual (A) who in fact is or has been such an officer, employee, or member, (B) whose identity as such an officer, employee, or member is classified information; or

(2) identifies as being or having been an agent of, or informant or source of operational assistance to, an intelligence agency any individual (A) who in fact is or has been such an agent, informant, or source, and (B) whose identity as such an agent, informant, or source is classified information,

knowing or having reason to know that the information disclosed so identifies such individual, is based upon classified information, and that the United States is taking affirmative measures to conceal such individual's intelligence relationship to the United States, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

2. Amend Section 502(b) to read as follows:

(b) No person shall be subject to prosecution under subsection 501(b) by virtue of section 2 or 3 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such subsection unless that person has acted with the intent to impair or impede the foreign intelligence activities of the United States.

3. Amend subsections 501(a)(1) and (b)(1) as follows:

a. In subsection 501(a)(1) on line 13, add after "is" the words "or has been" and delete on lines 15-18 the words "and (C) who is serving outside the United States or has within the last five years served outside the United States."

b. In subsection 501(b)(1) on line 18, add after "is" the words "or has been" and delete on lines 20-23 the words "and (C) who is serving outside the United or has within the last five years served outside the United States."

SUMMARY OF STATEMENT

MR. CHAIRMAN:

I START THIS MORNING FROM THE PREMISE THAT OUR EFFORTS TO COLLECT INFORMATION ABOUT THE PLANS AND INTENTIONS OF OUR POTENTIAL ADVERSARIES CANNOT BE EFFECTIVE IN A CLIMATE THAT CONDONES REVELATION OF THE MEANS BY WHICH THOSE EFFORTS ARE CONDUCTED. INDEED, THE IMPUNITY WITH WHICH MISGUIDED INDIVIDUALS CAN DISCLOSE OUR UNDERCOVER OFFICERS AND EMPLOYEES AND OUR FOREIGN AGENTS AND SOURCES HAS HAD A HARMFUL EFFECT ON HUMAN INTELLIGENCE COLLECTION AND OTHER ASPECTS OF OUR INTELLIGENCE PROGRAM AS WELL. EQUALLY SIGNIFICANT IS THE INCREASED RISK AND DANGER SUCH DISCLOSURES POSE TO THE MEN AND WOMEN WHO ARE SERVING THE UNITED STATES IN DIFFICULT ASSIGNMENTS ABROAD. IT IS OUTRAGEOUS THAT DEDICATED PEOPLE ENGAGED OR ASSISTING IN U.S. FOREIGN INTELLIGENCE ACTIVITIES CAN BE ENDANGERED BY A FEW INDIVIDUALS WHOSE AVOWED PURPOSE IS TO DESTROY THE EFFECTIVENESS OF ACTIVITIES AND PROGRAMS DULY AUTHORIZED BY THE CONGRESS.

THE DISTINGUISHED CHAIRMAN OF THIS COMMITTEE ELOQUENTLY EXPRESSED THE ESSENCE OF THE PROBLEM IN A RECENT LETTER TO THE EDITOR OF THE NEW YORK TIMES. CHAIRMAN BOLAND WROTE AS FOLLOWS:

"THE OPERATING HEART OF ANY SERVICE IS THE USE OF UNDERCOVER AGENTS AND OFFICERS OVERSEAS TO COLLECT INTELLIGENCE INFORMATION. OBVIOUSLY, IF THE NAMES OF THESE PEOPLE ARE SPREAD UPON THE PUBLIC RECORD THEIR USEFULNESS IS ENDED AND THE EFFECTIVENESS OF THE CLANDESTINE SERVICE IS DESTROYED . . . UNAUTHORIZED DISCLOSURE OF THE NAMES OF UNDERCOVER INTELLIGENCE AGENTS IS A MISGUIDED ACT THAT SERVES NO USEFUL INFORMING FUNCTION WHATSOEVER. IT DOES NOT ALERT US TO ABUSES; IT DOES NOT BRING CLARITY TO ISSUES OF NATIONAL POLICY; IT DOES NOT ENLIGHTEN PUBLIC DEBATE; AND IT DOES NOT CONTRIBUTE ONE IOTA TO THE GOAL OF AN EDUCATED AND INFORMED ELECTORATE. WHAT IT DOES DO IS PLACE LIVES IN

DANGER AND CRIPPLE OUR EFFORTS TO COLLECT TIMELY AND ACCURATE INTELLIGENCE, THE SINA QUA NON FOR THE EFFECTIVE CONDUCT OF FOREIGN AFFAIRS. WHATEVER THE MOTIVES OF THOSE ENGAGED IN SUCH ACTIVITY THE ONLY RESULT IS COMPLETE DISRUPTION OF OUR LEGITIMATE INTELLIGENCE COLLECTION PROGRAMS, PROGRAMS THAT BEAR THE IMPRIMATUR OF THE CONGRESS, THE PRESIDENT AND THE AMERICAN PEOPLE. SUCH A RESULT BENEFITS NO ONE BUT OUR ADVERSARIES."

MR. CHAIRMAN, THOSE WHO SEEK TO DESTROY THE INTELLIGENCE ACTIVITIES OF THE UNITED STATES HAVE PROPAGATED A NUMBER OF FALLACIES. UNFORTUNATELY SOME OF THESE HAVE FOUND THEIR WAY INTO DISCUSSIONS OF H.R. 5615 IN THE PRESS AND ELSEWHERE.

ONE OF THESE FALLACIES IS THAT ACCURATE IDENTIFICATION OF CIA PERSONNEL UNDER COVER CAN BE MADE MERELY BY CONSULTING PUBLICLY AVAILABLE DOCUMENTS, LIKE THE STATE DEPARTMENT'S BIOGRAPHIC REGISTER, AND THEREFORE THE BILL WOULD IMPINGE ON DISCUSSION OF INFORMATION THAT IS IN THE PUBLIC DOMAIN. THIS IS UNTRUE. A SECOND FALLACY IS SO

RIDICULOUS THAT I WOULD NOT MENTION IT EXCEPT THAT IT HAS CROPPED UP REPEATEDLY IN DISCUSSION OF THIS MATTER. THAT IS THAT SOMEONE MAY ENGAGE, IN GOOD FAITH, IN THE PUBLIC DISCLOSURE OF INTELLIGENCE IDENTITIES IN ORDER TO IMPROVE THE SECURITY PRACTICES OF OUR INTELLIGENCE AGENCIES. A THIRD FALLACY IS THAT THOSE WHO SEEK THE DESTRUCTION OF THE NATION'S INTELLIGENCE ACTIVITIES CANNOT BE DISTINGUISHED FROM SINCERE CRITICS OF THE CIA OR OTHER INTELLIGENCE AGENCIES AND ACTIVITIES.

THAT THE UNAUTHORIZED DISCLOSURE OF THE IDENTITIES OF INDIVIDUALS ENGAGED OR ASSISTING IN THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES HAS DAMAGED OUR NATION'S FOREIGN INTELLIGENCE GATHERING CAPABILITIES IS BEYOND QUESTION. OBVIOUSLY, SECURITY CONSIDERATIONS PRECLUDE MY CONFIRMING OR DENYING SPECIFIC INSTANCES OF PURPORTED IDENTIFICATION OF U.S. INTELLIGENCE PERSONNEL. SUFFICE IT TO SAY THAT A SUBSTANTIAL NUMBER OF THESE DISCLOSURES HAVE BEEN ACCURATE. THE DESTRUCTIVE EFFECTS OF THESE DISCLOSURES HAVE BEEN VARIED AND WIDE-RANGING.

OUR RELATIONS WITH FOREIGN SOURCES OF INTELLIGENCE HAVE BEEN IMPAIRED. NEARLY ALL MAJOR FOREIGN INTELLIGENCE SERVICES WITH WHICH WE HAVE LIAISON RELATIONSHIPS HAVE UNDERTAKEN REVIEWS OF THEIR RELATIONS WITH US. WE ARE INCREASINGLY BEING ASKED TO EXPLAIN HOW WE CAN GUARANTEE THE SAFETY OF INDIVIDUALS WHO COOPERATE WITH US WHEN WE CANNOT PROTECT OUR OWN OFFICERS FROM EXPOSURE. YOU CAN IMAGINE THE CHILLING EFFECT IT MUST HAVE ON A SOURCE TO ONE DAY DISCOVER THAT THE INDIVIDUAL WITH WHOM HE HAS BEEN IN CONTACT HAS BEEN OPENLY IDENTIFIED AS A CIA OFFICER.

THE PROFESSIONAL EFFECTIVENESS OF OFFICERS SO COMPROMISED IS SUBSTANTIALLY AND SOMETIMES IRREPARABLY DAMAGED. THEY MUST REDUCE OR BREAK CONTACT WITH SENSITIVE COVERT SOURCES. CONTINUED CONTACT MUST BE COUPLED WITH INCREASED DEFENSIVE MEASURES THAT ARE INEVITABLY MORE COSTLY AND TIME-CONSUMING. SOME OFFICERS MUST BE REMOVED FROM THEIR ASSIGNMENTS AND

RETURNED FROM OVERSEAS AT SUBSTANTIAL COST. YEARS OF
IRREPLACEABLE AREA EXPERIENCE AND LINGUISTIC SKILL ARE LOST.
REASSIGNMENT MOBILITY OF THE COMPROMISED OFFICER IS IMPAIRED.
AS A RESULT, THE POOL OF EXPERIENCED CIA OFFICERS IS BEING
REDUCED. SUCH LOSSES ARE DEEPLY FELT IN VIEW OF THE FACT
THAT, IN COMPARISON WITH THE INTELLIGENCE SERVICES OF OUR
ADVERSARIES, WE ARE NOT A LARGE ORGANIZATION. REPLACEMENT
OF OFFICERS THUS COMPROMISED IS DIFFICULT AND, IN SOME
CASES, IMPOSSIBLE. ONCE AN OFFICER'S IDENTITY IS DISCLOSED,
MOREOVER, COUNTERINTELLIGENCE ANALYSIS BY ADVERSARY SERVICES
ALLOWS THE OFFICER'S PREVIOUS ASSIGNMENTS TO BE SCRUTINIZED,
PRODUCING AN EXPANDED PATTERN OF COMPROMISE THROUGH ASSOCIATION.
SUCH DISCLOSURES ALSO SENSITIZE HOSTILE SECURITY SERVICES
AND FOREIGN POPULATIONS TO CIA PRESENCE, MAKING OUR JOB FAR
MORE DIFFICULT. FINALLY, SUCH DISCLOSURES CAN PLACE INTELLI-
GENCE PERSONNEL AND THEIR FAMILIES IN PHYSICAL DANGER FROM
TERRORIST OR VIOLENCE-PRONE ORGANIZATIONS.

IN A TIME WHEN HUMAN SOURCES OF INTELLIGENCE ARE OF CRITICAL IMPORTANCE, THERE CAN BE NO DOUBT THAT UNAUTHORIZED DISCLOSURES OF THE IDENTITIES OF OUR OFFICERS, AGENTS, AND SOURCES CONSTITUTE A SERIOUS THREAT TO OUR NATIONAL SECURITY. CURRENT LAW HAS PROVEN TO BE INADEQUATE IN DETERRING THESE UNAUTHORIZED DISCLOSURES, AND THEY CONTINUE TO BE MADE WITH VIRTUAL IMPUNITY. THE NET RESULT IS A DAMAGED INTELLIGENCE CAPABILITY AND REDUCED NATIONAL SECURITY.

MR. CHAIRMAN, I BELIEVE THAT LEGISLATION IN THIS AREA, TO BE EFFECTIVE, SHOULD CONTAIN CERTAIN KEY DISTINCTIONS AND ELEMENTS: FIRST, IT SHOULD HOLD CURRENT AND FORMER EMPLOYEES AND OTHERS WITH AUTHORIZED ACCESS TO PROTECTED INFORMATION TO A HIGHER STANDARD THAN PERSONS WHO HAVE NOT HAD SUCH ACCESS.

SECONDLY, THE LEGISLATION SHOULD REQUIRE PROOF THAT A DISCLOSURE IS MADE WITH CULPABLE KNOWLEDGE, OR WITH KNOWLEDGE OF SUFFICIENT FACTS TO MAKE THE AVERAGE PERSON AWARE OF THE NATURE AND GRAVITY OF HIS ACTIONS. THIS IS AN IMPORTANT

ELEMENT BECAUSE IT MUST DESCRIBE A STATE OF MIND WHICH WILL SUPPORT THE ATTACHMENT OF CRIMINAL SANCTION, WHILE AT THE SAME TIME BE CAPABLE OF PROOF IN THOSE DISCLOSURE CASES WHICH HAVE BEEN DAMAGING.

FINALLY, A STATUTE SHOULD REQUIRE PROOF THAT UNAUTHORIZED DISCLOSURES BY THOSE WHO HAVE NOT HAD AN EMPLOYMENT OR OTHER RELATIONSHIP OF TRUST WITH THE UNITED STATES WERE MADE WITH A SPECIFIC INTENT TO IMPAIR OR IMPEDE THE NATION'S FOREIGN INTELLIGENCE ACTIVITIES.

IN MY VIEW H.R. 5615 GOES A LONG WAY TOWARD MEETING THESE CRITERIA. IT IS A CAREFULLY CRAFTED AND NARROWLY DRAWN MEASURE WHICH COMES TO GRIPS WITH THE FULL EXTENT OF THE PROBLEM. THE COMMITTEE'S BILL WOULD GO FAR TOWARD SAFEGUARDING VITAL INTELLIGENCE CAPABILITIES WITHOUT IMPAIRING THE RIGHTS OF AMERICANS OR INTERFERING WITH CONGRESSIONAL OVERSIGHT. IN THE OPINION OF THE AGENCY'S LAWYERS, THE BILL WOULD MAKE POSSIBLE PROSECUTION OF THOSE WHO SEEK TO DESTROY

THE INTELLIGENCE CAPABILITIES OF THE UNITED STATES, WHILE LEAVING UNTOUCHED LEGITIMATE CRITICISM OF THE INTELLIGENCE COMMUNITY OR ITS ACTIVITIES. THERE ARE, HOWEVER, SEVERAL IMPROVEMENTS TO THE BILL THAT I WOULD URGE YOU TO MAKE:

1. I AM PERSUADED BY THE JUSTICE DEPARTMENT'S ARGUMENTS THAT THERE MAY BE SOME CASES IN WHICH THE SPECIFIC INTENT TO IMPAIR OR IMPEDE U.S. INTELLIGENCE ACTIVITIES WOULD BE DIFFICULT TO PROVE, BUT IN WHICH A NEXUS TO CLASSIFIED INFORMATION WOULD NOT. IN ORDER TO PROVIDE FULL COVERAGE, THEREFORE, I WOULD PROPOSE THAT SECTION 501(B) BE REVISED TO PROVIDE TWO ALTERNATIVE BASES FOR LIABILITY. ONE WOULD BE DISCLOSURE WITH THE SPECIFIC INTENT TO IMPAIR OR IMPEDE THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES; THE OTHER WOULD BE DISCLOSURE OF IDENTITIES "BASED ON CLASSIFIED INFORMATION."

2. A SECOND AREA REQUIRING IMPROVEMENT RELATES TO THE PROSECUTION OF ACCOMPLICES AND CONSPIRATORS. I SEE NO REASON TO IMMUNIZE PERSONS WHO ASSIST OR CONSPIRE WITH CURRENT OR FORMER EMPLOYEES OR OTHERS HAVING AUTHORIZED ACCESS TO CLASSIFIED INFORMATION IN THE COMMISSION OF AN OFFENSE UNDER SECTION 501(A). WITH RESPECT TO THIS GROUP OF ACCOMPLICES AND CONSPIRATORS, THERE SHOULD NOT BE A SPECIFIC INTENT REQUIREMENT.

3. H.R. 5615 DOES NOT COVER DISCLOSURE OF THE IDENTITIES OF FORMER OFFICERS OR EMPLOYEES OF AN INTELLIGENCE AGENCY OR MEMBERS OF THE ARMED FORCES FORMERLY ASSIGNED TO DUTY WITH AN INTELLIGENCE AGENCY. TO BE EFFECTIVE THE LEGISLATION SHOULD EXTEND TO THESE CATEGORIES OF PERSONS.

MR. CHAIRMAN, THERE IS A PRESSING NEED FOR EFFECTIVE LEGISLATION TO DISCOURAGE UNAUTHORIZED DISCLOSURES OF INTELLIGENCE IDENTITIES. THE CREDIBILITY OF OUR COUNTRY IN ITS RELATIONSHIPS WITH FOREIGN LIAISON SERVICES AND AGENT SOURCES, THE PERSONAL SAFETY AND WELL-BEING OF PATRIOTIC AMERICANS SERVING THEIR COUNTRY, AND THE PROFESSIONAL EFFECTIVENESS AND MORALE OF OUR COUNTRY'S INTELLIGENCE OFFICERS ARE ALL AT STAKE.

AS MATTERS NOW STAND THE INTENTIONAL EXPOSURE OF COVERT INTELLIGENCE PERSONNEL WITH IMPUNITY IMPLIES A GOVERNMENTAL POSITION OF NEUTRALITY. IT SUGGESTS THAT U.S. INTELLIGENCE OFFICERS ARE "FAIR GAME" FOR THOSE MEMBERS OF THEIR OWN SOCIETY WHO TAKE ISSUE WITH THE EXISTENCE OF CIA OR FIND OTHER PERVERSE MOTIVES FOR MAKING THESE UNAUTHORIZED DISCLOSURES. SPECIFIC STATUTORY PROHIBITION OF SUCH ACTION IS CRITICAL TO THE MAINTENANCE OF AN EFFECTIVE FOREIGN INTELLIGENCE SERVICE. IT IS IMPERATIVE THAT A MESSAGE BE SENT THAT THE UNAUTHORIZED DISCLOSURE OF INTELLIGENCE IDENTITIES IS INTOLERABLE.

I SINCERELY APPRECIATE YOUR GENUINE CONCERN ABOUT OUR INTELLIGENCE CAPABILITIES AND WHOLEHEARTEDLY SUPPORT YOUR EFFORTS TO DEAL WITH THIS SERIOUS PROBLEM. I ENCOURAGE YOU TO PROCEED TO REPORT LEGISLATION THAT WILL PROVIDE AN EFFECTIVE REMEDY. I BELIEVE EFFECTIVE LEGISLATION TO PROTECT INTELLIGENCE CAN AND SHOULD BE A KEY PART OF THE FOUNDATION FOR THE REVITALIZATION OF OUR NATION'S FOREIGN INTELLIGENCE CAPABILITIES.

WE HAVE SUPPLIED THE COMMITTEE WITH SOME SUGGESTED DRAFTING CHANGES IN H.R. 5615. MR. SILVER AND MR. HITZ WILL BE HAPPY TO DISCUSS THESE MATTERS IN GREATER DETAIL OR TO ANSWER ANY QUESTIONS YOU MAY HAVE ON THEM.